

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA :

- against - : 92-CR-351

CARMINE SESSA, : 99-CR-112

Defendant. : United States Courthouse

: Brooklyn, New York

----- X September 28, 2000

TRANSCRIPT OF SENTENCE
BEFORE THE HONORABLE DAVID G. TRAGER
UNITED STATES DISTRICT JUDGE

Appearances:

For the Government:

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SINDEE HASNOOT
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For the Defendant:

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Court Reporter:

HENRI LeGENDRE*
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*Transcribed by JOHN M. JONES, C.S.R., Senior Court Reporter
(retired), Supreme Court Kings County, from the stenographic
notes of HENRI LeGENDRE (deceased).

Proceedings recorded by mechanical stenography, transcript
produced by typewriter.

1 THE CLERK: U.S.A. versus Carmine Sessa. Counsel,
2 note your appearances, please. For the United States?

3 MR. STAMBOULIDIS: George Stamboulidis.

4 MR. LAVINE: Charles Lavine for the defendant.

5 P.O. HASNOOT: Sindee Hasnoot for the Government.

6 MR. LAVINE: I'm going to make a request. Because
7 of the sensitive nature of a considerable amount of material
8 that may be discussed at this hearing, I'm going to ask that
9 the courtroom be sealed.

10 THE COURT: What's the Government's view?

11 MR. STAMBOULIDIS: We are not opposing that request.

12 THE COURT: You are not opposing it; are you
13 supporting it?

14 MR. STAMBOULIDIS: Could I have one moment?

15 THE COURT: You haven't been before me for some
16 time.

17 MR. STAMBOULIDIS: Not that I forgot how to do my
18 job, just that different Districts have different policies,
19 and sometimes when I'm away I haven't kept up with all the
20 memos. Thank you for the opportunity to consult.

21 I understand what Mr. Lavine's request is and I
22 join in that aspect of it but I think he wants where there
23 can be certain safety and personal family circumstances
24 discussed and we would join in that application to seal that
25 portion of the proceedings.

1 THE COURT: There is no reason to discuss those
2 aspects of it in connection with this sentence.

3 MR. LAVINE: Very good then, your Honor.

4 THE COURT: So we'll proceed. Swear the defendant,
5 please.

6 THE CLERK: Stand and raise your right hand.

7 You swear the answers you are about to give will
8 be the truth, the whole truth and nothing but the truth, so
9 help you God?

10 THE DEFENDANT: I do.

11 THE CLERK: State your name for the record.

12 THE DEFENDANT: Carmine Sessa.

13 THE COURT: You do not require an interpreter?

14 THE DEFENDANT: No.

15 THE COURT: Have you read the pre-sentence
16 report and other reports and had them explained by your
17 counsel?

18 THE DEFENDANT: Yes.

19 THE COURT: Are you ready for sentencing?

20 THE DEFENDANT: Yes.

21 THE COURT: Are you satisfied with your attorney?

22 THE DEFENDANT: Yes.

23 THE COURT: Does the attorney have a question of
24 law?

25 MR. LAVINE: No, your Honor.

1 THE COURT: Are there any unresolved motions or
2 exceptions?

3 MR. STAMBOULIDIS: No.

4 THE COURT: You are seeking a downward departure?

5 MR. LAVINE: I'm joining in the Government's
6 request for a downward departure for Section 5-K of the
7 guidelines.

8 THE COURT: As I read the Government letter,
9 they are giving you a 5-K(1) letter but not with respect to
10 99-CR-112, is that correct?

11 MR. LAVINE: That is correct.

12 THE COURT: Are you seeking a downward departure
13 as to 99-CR-112?

14 MR. LAVINE: No, I am not.

15 THE COURT: Did you use the proper guidelines manual?

16 MR. LAVINE: Yes, your Honor.

17 THE COURT: Court observes the defendant's demeanor
18 and he appears to be capable of understanding these proceedings
19 and participating in them.

20 Does counsel agree?

21 MR. LAVINE: I do, your Honor.

22 THE COURT: Does the defendant waive the further
23 sharing with the defendant and the defendant's counsel of
24 information known to Probation, AUSA or the Court which is not
25 in the reports and does he waive the right, as I think you

1 already have, to publish these reports?

2 MR. LAVINE: Yes, your Honor.

3 THE COURT: Any victim statements?

4 MR. STAMBOULIS: No, Judge.

5 THE COURT: The plea was taken before me, was it?

6 MR. LAVINE: Yes.

7 THE COURT: Are you seeking for any reason to now
8 contest that plea?

9 MR. LAVINE: No, your Honor.

10 THE COURT: You reaffirm your guilt, sir?

11 THE DEFENDANT: Yes.

12 THE COURT: Anybody make any threats or promises to
13 induce you to reaffirm that guilt?

14 THE DEFENDANT: No.

15 THE COURT: Do you wish a Fatco (phonetic spelling)
16 hearing?

17 MR. LAVINE: No, your Honor.

18 THE COURT: Does the defendant know he can address
19 the Court personally and have witnesses on his behalf?

20 MR. LAVINE: He does, your Honor.

21 THE COURT: Do you wish to contest anything in the
22 pre-sentence report or other documents?

23 MR. LAVINE: Your Honor, it's not a matter of
24 contesting, two minor, very short provisions, very small
25 provisions in the sentence report, but paragraph 105 indicates

1 that Mr. Sessa was the actual shooter in five of the
2 murders. Turns out he was the actual shooter in four and
3 not five of the murders. And there is one other very
4 minor--

5 THE COURT: Which one do you want to change?

6 MR. LAVINE: It's--

7 MR. STAMBOULIDIS: Paragraph 105, line 3, "shooter
8 in five" should be "shooter in four."

9 THE COURT: All right, we'll make that change
10 physically in the probation report.

11 MR. LAVINE: We have one other minor inaccuracy
12 which is contained in the cover page. (Showing sheet to
13 the Court.)

14 THE COURT: August 7th instead of April 4th?

15 MR. LAVINE: Yes.

16 THE COURT: All right, August 7th.

17 MR. STAMBOULIDIS: Of '97.

18 THE COURT: And Probation will make that change

19 MR. LAVINE: Thank you very much.

20 THE COURT: Any particularized findings of fact
21 or law either side wishes?

22 MR. STAMBOULIDIS: No.

23 MR. LAVINE: No.

24 THE COURT: The Court has received confidential
25 information concerning this defendant that has been excluded

1 from the disclosed portion of the pre-sentence report.

2 This information is relied upon in imposing sentence

3 because the Court is satisfied that the information known

4 to the defendant is accurate, technical summary is unnecessary.

5 Are the calculations correct?

6 MR. LAVINE: Yes, your Honor.

7 THE COURT: 5-K(1) letter, I could depart, there
8 is no safety valve?

9 MR. STAMBOULIDIS: No, your Honor.

10 MR. LAVINE: No.

11 THE COURT: No obstructions, judgments, enhancements?

12 MR. STAMBOULIDIS: No, Judge.

13 THE COURT: The place of incarceration will not
14 be described in view of security requirements, but defense
15 counsel may make known to the Correction authorities the
16 desire of the defendant.

17 MR. LAVINE: Thank you.

18 THE COURT: Any assets this defendant has?

19 MR. LAVINE: No.

20 THE COURT: Special assessment here is \$250,
21 correct?

22 MR. STAMBOULIDIS: Yes, Judge.

23 THE COURT: Do you know you can take an appeal from
24 this sentence, sir?

25 THE DEFENDANT: Yes.

1 THE COURT: Are there limitations in the
2 agreement?

3 MR. STAMBOULIDIS: May I have one moment?

4 THE COURT: Yes.

5 (Pause, counsel conferring.)

6 MR. STAMBOULIDIS: Judge, I need to correct one
7 answer I gave. The misdemeanor fee was \$50.

8 THE COURT: Any provision in any of the agreements
9 with respect to appeal?

10 MR. STAMBOULIDIS: Not in the first plea agreement,
11 your Honor.

12 THE COURT: Well, there may be some limitation, sir,
13 in these various agreements that you have had over the years
14 with the Government. I will not advise you on how that
15 affects your right to appeal, but your counsel will.

16 Will you advise him?

17 MR. LAVINE: I will, your Honor, and just to
18 advise the Court in connection with the plea that was
19 entered with respect to Docket 99-CR-112, JBW, the defendant
20 did surrender the right to appeal as long as sentence
21 imposed was not greater than the guideline estimates contained
22 in that agreement.

23 MR. STAMBOULIDIS: The same is implicit in
24 paragraph 2 of the original, the parties reserve respective
25 rights to appeal and oppose each other if the sentencing court

1 imposes--

2 THE COURT: Slow down. You haven't gone over that?

3 MR. STAMBOULIDIS: Some habits are hard to shake.

4 I'll put paragraph 2 before the reporter.

5 THE COURT: No. No restitution.

6 Anybody take any property from you that has
7 not been returned, the Government?

8 Any open charges?

9 MR. STAMBOULIDIS: Yes.

10 THE COURT: Moving to dismiss?

11 MR. STAMBOULIDIS: Yes.

12 THE COURT: Granted. I'll hear any other matters
13 the parties wish to bring before the Court and I'll hear
14 from the defendant and counsel if they wish to be heard.

15 MR. STAMBOULIDIS: First, may I point out a
16 correction to the 5-K letter submitted to the Court, I think
17 yesterday, dated September 27th. It was a 12-pag letter with
18 two attachments. Page 4, five lines down--

19 THE COURT: Yes.

20 MR. STAMBOULIDIS: Right after the individual's
21 name, it says, "who was buried." The word "buried" should
22 be crossed out and the word "murdered" should be inserted.

23 THE COURT: Okay, I'll make that change. I'll
24 make the change in this letter and the response of the
25 defense counsel.

1 MR. LAVINE: Thank you. With respect to the
2 response that I had submitted to the Court, there is also
3 a typographical omission. The word "they" was inadvertently
4 omitted from the top of page 3.

5 THE COURT: Where?

6 MR. LAVINE: It would be immediately preceding
7 the word "have" at the top of page 3 of the letter of
8 September 26th.

9 THE COURT: Oh, yes. I'll put it at the bottom.

10 MR. LAVINE: Thank you.

11 MR. STAMBOULIDIS: Your Honor, both Mr. Lavine,
12 myself and the defendant would like to address the Court.
13 In what order would you like us to begin

14 THE COURT: I'll hear from the defendant, from
15 his counsel and then from the Government.

16 THE DEFENDANT: Yes, sir.

17 THE COURT: You can sit if you are more comfortable.

18 THE DEFENDANT: I don't know if there is anything
19 that I can say to make anyone forgive me, but I would like to
20 try. I'm very sorry for any crimes, very sorry for the
21 victims and their families who still suffer the losses every
22 day. I wound up growing up around a life that was and is
23 a disease that has destroyed so many families throughout the
24 years, including my own, which I love and miss so much that
25 it's painful. I hope some day they can understand me. I

1 started shining shoes in clubs and bars in my neighborhood
2 and meeting these people. Eventually I started stealing
3 and selling things to these people. I also started
4 working in a card game and getting to know more people and
5 they got to know me as a good kid, a thief, a burglar, a
6 tough kid, a standup kid.

7 From there, the crimes escalated eventually to
8 murder and it seems to never stop. I saw friends get
9 killed. One day, your friend and the next day somebody
10 says he's got to go for whatever reason and sometimes you're
11 a part of it or even asked to pull the trigger. You find
12 ourself telling their families you don't know what
13 happened but we're going to find out and them believing you.
14 Everybody gets killed by a bunch of animals or so-called
15 friends. This thing that I thought I respected as a young
16 man had no respect at all but it did have plenty of
17 disrespect. All the families hated each other and within
18 the families they hated on another. It is a disease that
19 keeps growing and spreading. You cut off the head, a new
20 one grows, cut off an arm, a new one grows.

21 To me, the more I wanted to be left out ad
22 pulled in and appointed their consiglieri, a position I
23 didn't want. I was looking to keep far away and ask for
24 them not to give it to me but to no avail. I hate every-
25 thing about the life I led and hope that it ends some day

1 soon because it keeps destroying families and young kids
2 who are infatuated with it and can't wait to be a good fellow.
3 I wish I could tell them all what it really is and not what
4 they think it is.

5 I don't like what I'm doing, putting people in
6 jail, but I don't want this thing to keep growing so I
7 help when I can. I accept full responsibility of my
8 crimes and blame no one else, not my associates, not my
9 environment, just me.

10 THE COURT: Thank you.

11 MR. LAVINE: Your Honor, beyond what Mr. Sessa
12 has just said and what was contained in the letter that I
13 submitted on the 26th, there is not a whole lot that I can
14 add. It is an extraordinary journey that Mr. Sessa has been
15 involved with. Against all odds, he did indeed rebel
16 against the world as he knew it. For better or worse, he
17 was a part of that world. As he just advised your Honor,
18 it was often for the worse that he was part of that world.

19 He has done everything that he can to make amends
20 for his conduct. He has always been sincere. He has
21 always been truthful. He has always been accurate in
22 describing that world. He's a man who is utterly, almost
23 utterly alone. He has one or two people left in his own
24 real family with whom he is still able to remain close.

25 As the Court is aware, the time that he served,

1 all this time that he has served he has served in isolation.
2 He's shunned, he's ostracized, he's indeed been brutalized.
3 To his remarkable credit, he has not fought back. To his
4 remarkable credit, he is, at least in the opinion of counsel,
5 entirely sincere when he advises this court that it's his
6 sincere desire to do whatever he can to try to make sure
7 that other youngsters who come from similar backgrounds as
8 his do not end up walking down the same road as he has.

9 I urge the Court to take all this into
10 consideration in fashioning an appropriate and fair
11 sentence.

12 THE COURT: Thank you.

13 MS. STAMBOULIDIS: Thank you, Judge. As Mr. Sessa
14 acknowledges, he committed very serious and very violent
15 crimes when he was part of Cosa Nostra, many of which the
16 Government did not know about until he revealed to us
17 his participation in them. Since then, he's permanently
18 severed his relationship with La Cosa Nostra as a result
19 of becoming a cooperating individual. He accepts
20 responsibility for crimes, pleads guilty before your
21 Honor to and for initially those charged crimes that
22 were representative of the most serious crimes in his
23 career as a Cosa Nostra member, knowing at the time that
24 he pleaded guilty before you that on this his sentencing
25 date, his future would likely be decided based on those past

1 serious crimes and whatever cooperation he gave, he
2 embarked on the path of cooperation with enthusiasm.

3 Understanding that he gave it his all as a
4 cooperating witness, as set out in the 5K letter that we
5 submitted and we ask the Court to consider his cooperation
6 was extraordinary, it was swift in relationship to his
7 arrest, which allowed the Government to make effective use
8 of it quickly. It was comprehensive. He testified in
9 eight Federal trials. His information led to successful
10 search warrants, led to other individuals making decisions
11 to cooperate and other individuals making decisions to plead
12 guilty. It also led to the exculpation of two others who
13 were wrongly convicted for a murder he committed.

14 His cooperation included cooperation against
15 others who were far more powerful and significant in La
16 Cosa Nostra than he was and another important aspect of
17 cooperation was timing, as sometimes is the case. His
18 cooperation came at a crucial time that allowed the
19 Government--and it was a crucial time in modern-day La
20 Cosa Nostra history, especially with respect to the five
21 New York based families--the cooperation came at a time that
22 allowed the Government to put an end to the Columbo family
23 war that plagued the City for quite a while, '91 through '93.

24 He approached his cooperation--and I worked with
25 him personally on a number of occasions, as did a number of

1 assistants who are in court today, including the Criminal
2 Division Chief, Andrew Wiseman. I also forgot his title.
3 Associate Attorney General, I believe, or Assistant Attorney
4 General Jaime Ohrenstein (phonetic spelling), if I
5 demoted or promoted him, I apologize; Assistant U.S.
6 Attorney Dan Dorsky, Steven Kielly (phonetic spelling),
7 who are in court, as well as Supervisor Leadbetter and
8 many others working with him, as did I. He approached
9 that cooperation with great care and thought each of the
10 parties in the trial were entitled to.

11 His cooperation had various consequences to him
12 outside of any possible consideration he may receive on a
13 day like this at sentencing. It necessarily, as it often
14 does in this cases, changes his life, for in a number of
15 ways it will necessitate his being ostracized in prison
16 and banished from New York and other areas where La Cosa
17 Nostra has a prominent presence, should he ever be released
18 from custody. And in a most troubling, somewhat ironic,
19 tragic way his cooperation disrupts the La Cosa Nosta
20 family but his own family, his biological family, his
21 relationship with his brother, whose trial you presided
22 over, his obviously strained relationship with his brother
23 as a result of that cooperation, also strained his relationship
24 with his biological family that he created, is also quite
25 strained, to say the least.

1 I won't go through and summarize what we have
2 already written to you in our letter. It summarizes his
3 extraordinary cooperation and the truly substantial
4 assistance he gave us thusfar each year for approximately
5 seven years. We appreciate the cooperation he gave at
6 great personal risk and cost to him and his family.

7 As we promised in the plea agreement we entered
8 into, we move under 5-K 1.1 to downwardly depart from the
9 guidelines with respect to the information docketed
10 92-CR-351.

11 Thank you, Judge.

12 THE COURT: Thank you.

13 As far as 92-CR-351 is concerned, your 5-K(1)
14 covers that completely, both any possible minimum as well
15 as to the guidelines.

16 MR. STAMBOULIDIS: Correct, your Honor.

17 THE COURT: As to that--

18 MR. STAMBOULIDIS: I should point out one further
19 thing. Sorry for interrupting. I haven't lost that habit
20 either.

21 THE COURT: It's okay.

22 MR. STAMBOULIDIS: When he leaves here, not
23 necessarily today, sometime in the near future, he will
24 go before Judge Glasser to be sentenced on the open
25 violation of probation that he never settled, in the summer

1 of '92.

2 THE COURT: I recognize that.

3 As to 92-CR-351, the defendant is sentenced to
4 time served and supervisory release. I'll say a little
5 more about the terms of supervisory release in just a
6 moment. And I think in that case it's what, fifty or a
7 hundred?

8 MR. STAMBOULIDIS: Fifty.

9 THE COURT: Fifty dollars.

10 MR. STAMBOULIDIS: Special assessment.

11 THE COURT: As a special assessment and no fine.
12 That's in lieu of a live sentence which could have been
13 imposed.

14 As to the two counts in 99-CR-112, maximim term,
15 99-CR-112 is still life, is it not?

16 MR. LAVINE: I'm sorry. Under 99--

17 MR. STAMBOULIDIS: No.

18 THE COURT: How much?

19 MR. STAMBOULIDIS: Ten years.

20 THE COURT: Maximum ten years, I'm sorry, for
21 count one and maximum five years for count two, correct?

22 MR. STAMBOULIDIS: Yes, your Honor.

23 THE COURT: With no minimum.

24 MR. STAMBOULIDIS: Right, no minimum.

25 THE COURT: Now, on that I impose a hundred

1 dollars special assessment as to each count, three years
2 supervisory release on count one, five years on count two,
3 concurrent with the five years on 92-CR-351.

4 That's appropriate, is it not?

5 P.O. HASNOOT: Yes.

6 MR. STAMBOULIDIS: The supervisory release
7 was three years on count one or were they combined?

8 THE COURT: All concurrent on the supervisory
9 release.

10 MR. STAMBOULIDIS: I see.

11 THE COURT: And the supervisory release need not
12 be intense. That depends on cooperation between the
13 Probation Services and various other services of the
14 Government concerned with the safety of this defendant. Is
15 that clear?

16 MR. STAMBOULIDIS: Yes, your Honor.

17 THE COURT: So that leaves open the question of
18 incarceration on counts one and two, 99-CR-112.

19 MR. LAVINE: Yes.

20 MR. STAMBOULIDIS: Yes.

21 THE COURT: No minimum. Now, as to those counts,
22 in that incarceration, he's been incarcerated to this date
23 under intense security controls within the place of
24 incarceration, is that right?

25 MR. LAVINE: Yes, he has.

1 THE COURT: And cut off from normal visiting
2 for reasons of alienation already described by the
3 United States Attorney, is that correct?

4 MR. LAVINE: Yes, your Honor.

5 THE COURT: Under those circumstances, subject
6 to hearing the views of counsel for the Government and
7 counsel for the defendant, it would be my inclination to
8 sentence him to time served, which would date back to
9 April 3, 1993, with releases and (illegible stenographic
10 outline--J.J.) in 1998 on a complex paper, correct?

11 MR. STAMBOULIDIS: Yes, your Honor.

12 THE COURT: The reason for that being that the
13 time in prison would have to be under very severe circum-
14 stances enhancing the nature of the punishment to the point
15 where it might be deemed cruel and inhuman under the
16 Constitution and the problem of protecting the defendant
17 under the Witness Protection Act or whatever procedures
18 the Government will utilize would be much simplified by a
19 release contemporaneous with this sentence.

20 However, in view of the very severe crimes
21 committed by the defendant, but in light of the substantial
22 cooperation and other aspects referred to by the Government
23 and defense counsel in their open statements and their
24 sealed comments as seems appropriate, that is to say, it
25 appears time to cut the relationship in view of what the

1 Government suggests in its communication is sincere
2 rehabilitation. What is the Government's view, if any?

3 MR. STAMBOULIS: As is our practice--I remember
4 this much--as is our practice, we take no position on the
5 actual sentence.

6 THE COURT: But such a sentence would be consistent,
7 would it not, with the various letters and relationships
8 described in this correspondence and other material?

9 MR. STAMBOULIS: Yes, Judge.

10 THE COURT: All right, that's the sentence.

11 MR. LAVINE: May we have one moment?

12 THE COURT: Any other matter you wish to take
13 care of?

14 MR. LAVINE: Judge, we have an unusual request
15 which we have discussed beforehand, counsel and defendant
16 and the Government and that is, in order to accommodate the
17 sentence that the Court has discussed here, it being time
18 served--let me--I'm not taking a position the defense needs
19 to make the request. It's sort of a procedural snag and
20 that is for reasons having to do with the Witness Protection
21 Program and other features of this, he would have to be in
22 custody for another 30 days.

23 THE COURT: The release is stayed for 30 days.

24 MR. LAVINE: Thank you.

25 MR. STAMBOULIDIS: At this time we move to dismiss

1 all open counts as against this defendant in the 92-CR-351
2 series of superseding indictments and the original indictment.

3 THE COURT: Thank you. Good luck, sir.

4 THE DEFENDANT: Thank you very much, your Honor.

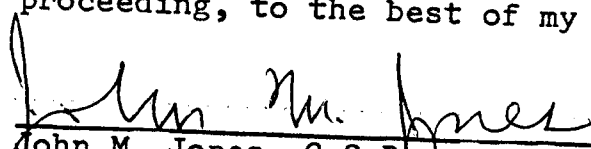
5 THE COURT: I just want to remind you there
6 was one defendant sometime ago who went to Arizona before me--
7 you remember the case--and he slid back and he spent,
8 I believe, ten years in prison as a result of that slip.
9 So good luck and bear that in mind.

10 THE DEFENDANT: Thank you very much, your Honor.
11 You won't hear from me no more.

12 THE COURT: I hope not.

13 * * * * *

14 Certified to be an accurate transcript of the
15 minutes taken by HENRI LeGENDRE in the above
16 proceeding, to the best of my ability.

17 
18 John M. Jones, C.S.R.
19 Senior Court Reporter (retired)
20 New York State Supreme Court
21 Kings County
22
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